GUAN SENG KEE LTD. v. BUAN LEE SENG LTD.

[P. C. (Earl Jowitt, Lord Oaksey, and Sir Lionel Leach) November 17, 1953]

[Privy Council Appeal No. 1 of 1953]

Landlord and tenant — Sub-tenancy — Determination of tenancy of chief-tenant — Statutory tenant — Possession — Control of Rent Ordinance, 1947, ss. 2, 14(1), 15, 16 and 17.

This was an appeal from the decision of the Court of Appeal of Singapore (reported in (1952) M.L.J. 224). The question which arose was whether by reason of the provisions of the Control of Rent Ordinance, 1947, a sub-tenant was entitled to remain in possession of premises lawfully let to him after the owner of the premises had by notice to quit determined the chief-tenant's tenancy.

The Court of Appeal upheld the trial Judge's decision that the respondents were tenants within the meaning of the definition given by section 2 of the Control of Rent Ordinance, 1947, and that they were entitled to the protection of section 14 of the Ordinance as the appellants were unable to bring their case within any of the exceptions therein set out.

On appeal to the Privy Council, —

Held: the principle underlying the Control of Rent Ordinance, 1947, was the protection of those who had obtained lawful possession of premises whether as tenants or sub-tenants. A sub-tenant of premises lawfully sub-let to him, and against whom an action for possession was brought by the landlord after the latter had by notice to quit determined the tenancy of the chief-tenant, was a "tenant" within the meaning of section 16(a) of the Ordinance, read in the light of the definition in section 2, and was therefore, a "statutory tenant" within the meaning of section 16, and accordingly, as the case could not be brought within any of the exceptions covered by section 14 of the Ordinance justifying an order for possession, was entitled to the protection of the Ordinance and to remain in possession of the premises.

Judgment of the Court of Appeal affirmed.

[**Editorial Note:** The Control of Rent Ordinance, 1947 was repealed and replaced by Control of Rent Ordinance, 1953.]

PRIVY COUNCIL APPEAL.

L. G. Scarman and *N. L. Macassey* for the appellants.

Colin Duncan and *B. T. Neill* for the respondents.

The judgment of their Lordships was delivered by:

Sir Lionel Leach: — This is an appeal from a judgment of the Court of Appeal of the Colony of Singapore. The question which arises is whether by reason of the provisions of the Control of Rent Ordinance, 1947, a sub-tenant is entitled to remain in possession of premises lawfully let to him after the owner of the premises has by notice to quit determined the head tenancy.

The facts are not in dispute. On the 2nd June, 1950, the appellants purchased from a company called United Engineers Limited premises known as No. 7 Read Street, Singapore, which were then held by another company, Harper Gilfillan and Company Limited under a monthly tenancy. Harper Gilfillan and Company Limited had, as they were entitled to do, sub-let the premises to the respondents. On the 8th July, 1950, the appellants served on Harper Gilfillan and Company Limited a notice to quit to take effect on the 31st August, 1950. The respondents were given possession of the premises under their sub-tenancy on the 1st January, 1947, and have been in continuous possession ever since.

By a writ of summons dated the 13th September, 1950, the appellants commenced in the High Court of Singapore the action which has given rise to this appeal. As owners of the premises they claimed possession against the respondents, but they did not add Harper Gilfillan and Company Limited as defendants. The action was defended on the ground that by reason of the provisions of the Rent Control Ordinance the respondents had become statutory tenants and therefore their possession was protected. The Trial Judge found for the respondents and his finding was upheld by the Court of Appeal.

For the purposes of deciding the question raised it is necessary to examine the definitions of "landlord", "tenancy" and "tenant" to be found in section 2 of the Ordinance and refer to sections 14(1), 15, 16 and 17.

The definitions are as follows:—

"Landlord" means the landlord of premises in respect of which a tenancy exists and includes the landlord of a statutory tenant and in the case of a sub-tenancy a tenant who sublets the premises or any part thereof;

"Tenancy" means any lease, demise, letting or holding of premises whether in writing or otherwise, by virtue whereof the relationship of landlord and tenant is created, but does not include the letting or hiring of furnished rooms with board;

"Tenant" means the tenant of premises in respect of which a tenancy exists and includes a statutory tenant and in the case of a sub-tenancy a sub-tenant to whom the premises or any part thereof is sublet.

Section 14(1) opens with these words:—

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely, —"

Thirteen exceptions are then set out. None of them applies if the respondents are statutory tenants within the meaning of the Ordinance.

Section 15 contains these provisions:—

"(1) No judgment or order for recovery of possession shall be enforced as against the sub-tenants (if any) of the tenant of the premises, where the tenant was not prohibited from subletting by the terms of his tenancy; and every such judgment or order shall declare whether it may be enforced as against such sub-tenants or not.

(2) Any sub-tenant against whom such judgment or order is not enforceable shall, if he remain in possession after notice of the judgment or order has been served on him, cease to be a sub-tenant of the tenant and become a statutory tenant of the landlord in respect of the premises comprised in his sub-tenancy."

It is common ground that this section does not apply in this case as no judgment was obtained against Harper Gilfillan and Company Limited.

Section 16 reads as follows:—

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord;

(b) any sub-tenant becoming a statutory tenant under and by virtue of the provisions of sub-section (2) of section 15."

Section 17 sets out the terms under which a statutory tenant is deemed to hold the premises.

The learned Trial Judge (Rogers J.) held that the respondents were tenants within the meaning of the definition given by section 2 and were entiled to the protection of section 14 as the appellants were not able to bring their case within any of the exceptions therein set out. He held further that when the interest of Harper Gilfillan and Company Limited ceased as from 31st August, 1950, their lawful sub-tenants, the respondents, began to hold as tenants from the head landlords. The Court of Appeal (Murray-Aynsley, C.J. Singapore, Matthew, C.J. Federation of Malaya and Brown, J.) agreed with these conclusions.

Before the Board the case for the appellants has been put in this way. The action was one at common law and therefore outside the Ordinance. Section 14 imposes restraint on the common law right, but deals only with premises comprised in a tenancy, and here the tenancy had ceased to exist, having been determined by the notice to quit served upon Harper Gilfillan and Company Limited. Section 16 does not help the respondents as the word "tenant" as used therein cannot be deemed to include a sub-tenant.

The principle underlying the Ordinance is the protection of those who have obtained lawful possession of premises whether as tenants or sub-tenants and sections 14 and 16 must be read in the light of the definitions given in section 2. Harper Gilfillan and Company Limited were as regards the respondents "landlords" and the respondents were their "tenants." The premises in suit were comprised in a "tenancy". Clearly the appellants cannot bring the case within any of the exceptions covered by section 14.

The case is governed by section 16, clause (*a*). It was conceded on behalf of the appellants that the word "tenant" would include a sub-tenant if this clause had stopped at the word "tenancy" but it was suggested that the words which follow, "and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord" indicate that a sub-tenant is excluded. Their Lordships cannot accept this interpretation. They consider that the additional words merely refer back to section 14, just as clause (*b*) refers back to section 15, and do not restrict the meaning of the words used in the first part of the clause. For these reasons their Lordships hold that the respondents are statutory tenants within the meaning of section 16 (*a*) and consequently their possession of the premises is protected.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants will bear the costs.

Appeal dismissed.

Solicitors for the appellants: *Chalton Hubbard & Co.*

Solicitors for the respondents: *Sydney Redfern & Co.*

LIM KEE BUTT v. PUBLIC PROSECUTOR.

[C. A. (Mathew C.J., Brown Ag. C.J. (S.) and Wilson J.) December 2, 1953]

[K.L. — Criminal Reference No. 4 of 1953]

Penal Code, s. 409 — Criminal breach of trust by a public servant — Circumstances in which a Government servant is considered a public servant within the meaning of s. 21 Penal Code.

This was a reference made to the Court of Appeal by the Attorney General to determine the question:—

"Whether a temporary clerk in the employment of the Federation, whose duties were set out in the judgment of Mr. Justice Bellamy in the case was a public servant within the meaning of the Penal Code."

The appellant was convicted by the Sessions Court, Malacca, under section 409 of the Penal Code, with having committed a criminal breach of trust as a public servant within the meaning of section 21 of the Penal Code. The learned judge on appeal held that the appellant was not a public servant and altered the conviction to one under section 406 of the Penal Code.

Held: that the appellant was a public servant within the meaning of clause 9 of section 21 of the Penal Code and accordingly the conviction under section 406 of the Penal Code was set aside and the original conviction under section 409 restored.

Decision of Bellamy J. reported in the (1953) M.L.J. 209 reversed.

Cases referred to:—

(1) *Regina v. Ramjirav Jibvajirav* (1875) 12 Bom. H.C.R. 1.

(2) *Ahad Shah v. Emperor* (1918) A.I.R. (Lah) 152.

(3) *Nazamuddin v. Queen Empress* I.L.R. 28 C. 344.

(4) *Jugal Singh v. Emperor* (1943) A.I.R. (P) 315.